

**IN THE UNITED STATES DISTRICT COURT
FOR THE EASTERN DISTRICT OF PENNSYLVANIA**

UNITED STATES OF AMERICA	:	
	:	
v.	:	Criminal No. 97-112
	:	
JESSE A. ROBINSON	:	
	:	

MEMORANDUM

McGlynn, J.

September 23, 1997

Before this court is defendant Jesse A. Robinson's Motion to Reconsider Restitution Order. For the reasons that follow, defendant's motion is denied.

I. Background

On August 5, 1997, this court convicted defendant Robinson of the theft of government goods and possession of goods stolen from an interstate shipment. Defendant stole five cartons of unopened, first-class postage stamps worth \$144,000 from a railroad cargo carrier in violation of 18 U.S.C. §§ 641 and 659. Of the \$144,000 worth of stamps stolen, only \$32,000 worth of stamps were recovered. As a result, the court sentenced defendant to 33 months incarceration and ordered him to pay restitution in the amount of \$112,000. Payment of this restitutionary obligation is to commence upon defendant's release from prison.

On August 6, 1997, defendant filed a motion requesting that this court reduce the amount of monthly restitution payments from \$50 per month to an amount not exceeding \$10 per month. Defendant based this request upon his indigence and his alleged future inability to pay restitution resulting from his present substance abuse problem. See Defendant's Motion to Reconsider

Restitution, at 1, 2. In light of his economic status, defendant contends that the court's order of \$50 per month does not fall under the statutory language "nominal periodic payments" in Title 18 U.S.C. § 3664(f)(3)(B).¹

II. Discussion

In the present case, this court acted within its discretion in authorizing restitution payments by defendant of \$50 per month. 18 U.S.C. § 3663A(c)(1)(A)(ii) (1994). "The court shall order restitution to each victim in the full amount of each victim's losses as determined by the court and without consideration of the economic circumstances of the defendant." 18 U.S.C. § 3664(f)(1)(A) (1994). Since the government has not recovered the remaining \$112,000 worth of stolen stamps nor has the defendant cooperated in their return, the court required defendant to pay restitution in the full amount of \$112,000.

Before ordering a schedule for restitution, a sentencing court must consider three factors: "(A) the financial resources and other assets of the defendant, including whether any of these assets are jointly controlled; (B) projected earnings and other income of the defendant; and (C) any financial obligations of the defendant, including obligations to dependants." 18 U.S.C. § 3664(f)(2) (1994). In addition, a district court must make specific factual findings concerning a defendant's ability to pay restitution. United States v. Pollak, 844 F.2d 145 (3d Cir. 1988). Specifically, the "district judge must point to evidence in the records supporting the calculation of loss to the victims." United States v. Copple, 74 F.3d 479, 482 (3d Cir. 1996) (citing United

¹This section states that: "[A] restitution order may direct the defendant to make nominal periodic payments if the court finds from the facts on the record that the economic circumstances of the defendant do not allow for the payment of any amount of a restitution order, and do not allow for the payment of the full amount of a restitution order in the foreseeable future under any reasonable schedule of payments." 18 U.S.C. § 3664(f)(3)(B) (1994).

Statesv.Copple ,24F.3d535,549-50(3dCir.), cert.denied 513U.S.989(1994)). While the government has the burden of proving, by a preponderance of the evidence, the total amount of loss sustained by the victim, it is the defendant who has the burden of demonstrating, by a preponderance of the evidence, his financial means and resources. United States v. Cannistrato , 871F.2d1210,1214(3dCir.1989).

A. Defendant's Financial Resources and Future Financial Status

According to the Presentence Report, defendant has no assets, debt or income and no credit history. See Robinson Presentence Report, at 11. Defendant claims the \$50 per month is too excessive because: (1) he presently cannot pay the amount nor would he be able to pay the restitution in the future; (2) his substance abuse problem will detract from defendant's ability to pay restitution; and (3) he is indigent. See Defendant's Motion to Reconsider Restitution, at 1. Defendant, however, has a statutory burden of demonstrating his financial condition and need to the court. See 18 U.S.C. § 3664(d) (1994).

Defendant alleges that he is homeless and lives on the streets of Philadelphia. Id. Thus, when calculating defendant's financial resources, this court must consider defendant's present indigence. According to the Third Circuit, "indigence at sentencing is not a bar to ordering a defendant to pay restitution in the future." United States v. Logar , 975F.2d958,962(3dCir. 1992). The court reasoned that a defendant's indigence is not determinative in calculating a restitution order because the indigence may only be temporary. United States v. Carrara , 49F.3d 105,109(3dCir.1995). Therefore, defendant's present indigence does not shelter defendant from paying restitution.

Additionally, defendant alleges that his substance abuse addiction will have an impact on

ahisfuturefinancialstatus.Defendantthaselevenpriorconvictionsandalengthylistofprior offenses. SeeRobinsonPresentenceReport,at4-9.However,uponhisreleasefromprison,this courthasordereddefendanttoparticipateinadrugandalcoholtestingandtreatmentprogram. SeeJudgment, Aug.6,1997,at4.Further,ifdefendantisnotgainfullyemployedorenrolledina fulltimevocationaloreducationalprogramduringhisprobation,hemustperformtwentyhours ofcommunityserviceperweekasdirectedbyhisprobationofficer. Id.Theseprograms will assistthedefendantinremainingdrug-free,outofprison,andconsequently,provideddefendant withthechancetoobtainandretainemployment.

Further,defendantisfortyyearsofageandhasearnedahighschool diploma.Boththe recordanddefendant'smotionaredevoidofanyevidenceofaphysicalormentaldisabilitythat wouldprecludedefendantfromobtainingemployment.Notonlydoesdefendantpossessthe abilitytowork,buthealsohasemploymentexperienceinthepastworkingatadairyplant,a plasticbagfactoryandasatruckdriver. SeePsychiatricandSubstanceAbuseEvaluationin Defendant'sSentencingMemorandum,at2.Further,atdefendant'sSentencingHearing,his ProbationOfficernotedthatthedefendantwouldearnmoneywhileincarceratedfor33months undertheInmateResponsibilityProgram. ²Thus,inthefuture,defendantwillbeabletopaya portionofhisrestitutionaryobligationoveraperiodofsupervisedrelease.

Moreover,theamountof\$50permonthwillaverageapproximately\$12.50perweek, equalingonly\$600peryear,andpaymentwillnotcommenceuntilthedefendantisreleasedfrom prison.AccordingtotheThirdCircuit,"thesentencingcourtshouldgroundtheamountof

²TheInmateFinancialResponsibilityProgramalignsinmateswithprisonstafftodevelop afinancialresponsibilityplantomeettheinmate'scourt-orderedfinancialobligations. Jamesv. Quinlan,866F.2d627,628(3dCir.1989).

restitution ordered on realistic prospects that the defendant will be able to pay it, and not on fantastic or overly speculative possibilities.” Copple, 74 F.3d at 484 (citing United States v. Hallman, 23 F.3d 821, 827 (3d Cir.), cert.denied 513 U.S. 881 (1994)). Defendant’s order is not an impossible order of restitution, but rather an amount that defendant can realistically pay considering his physical and mental health, education, employment skills and financial ability.

B. Defendant’s Financial Obligations

Defendant’s financial obligation to any dependants is another important factor in the restitution calculation. Here, defendant is not married, but he is the father of a eighteen-year old daughter. However, because defendant’s daughter has reached the age of majority and because defendant has never financially supported his daughter, defendant does not owe any financial obligations to his daughter. This reasoning also supports defendant’s ability to pay the nominal \$50 restitution per month ordered by this court.

II. Conclusion

Therefore, this court will deny defendant’s Motion to Reconsider Restitution Order.